

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL S. ARGENYI,)	
)	
Plaintiff,)	8:09CV341
)	
vs.)	Omaha, Nebraska
)	September 3, 2013
CREIGHTON UNIVERSITY,)	
)	
Defendant.)	

VOLUME VIII
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LAURIE SMITH CAMP
CHIEF UNITED STATES DISTRICT JUDGE AND A JURY

COURT REPORTER: Ms. Brenda L. Fauber, RDR, CRR
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Proceedings recorded by mechanical stenography, transcript
produced with computer.

A-P-P-E-A-R-A-N-C-E-S

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FOR THE DEFENDANT:

Mr. Scott P. Moore
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1 (At 3:58 p.m. on September 3, 2013, with counsel for the
2 plaintiff present in chambers and counsel for the defendant
3 present via telephone, the following proceedings were had:)

4 THE COURT: This is Judge Smith Camp. And
5 plaintiff's counsel are in the room, as well as Rachel Timm,
6 our law clerk. And Brenda Fauber is making a record.

7 I have a question from the foreperson of the jury and the
8 question is: What do we do if we have a split decision on
9 number one question?

10 Now, they're continuing deliberating. They're still
11 working in there. My question for both sides here is whether
12 you've had any discussion about the possibility of a
13 nonunanimous verdict.

14 And I will just mention to you that in at least one case
15 I've had not too long ago, there was an agreement to go down,
16 say, in that case from 12 to 11. We still didn't have a
17 verdict. Then there was an agreement to go down from 11 to
18 10. Still no verdict. We went down from 10 to 9, and we got
19 a verdict. And neither side was happy with the verdict, and
20 they appealed as I recall.

21 So, that's the discussion I wanted to have at this
22 juncture. And you don't necessarily need me for this
23 discussion, but I do need to respond to the jury.

24 I know another potential response is to bring them in and
25 have an Allen charge, and I can certainly do that. I'm very

1 willing to do that.

2 I certainly don't want to release them yet because nobody
3 really wants to try the case again. And if there's a
4 possibility of getting a verdict, that would be preferable.

5 But I believe the pretrial order indicated that you were
6 requiring a unanimous verdict.

7 So, I'll ask the plaintiff if you have any position on
8 that that you want to share at this time, or if counsel would
9 prefer to talk among themselves and then get back to me in a
10 short period of time so I can respond to the jury?

11 I just don't want to keep the jury waiting too long.

12 MS. VARGAS: Your Honor -- Scott, hi; Allie, hi; this
13 is Mary Vargas.

14 The request for unanimous verdict came from defendants.
15 And so I think it really is in their hands whether at this
16 point they'd be willing to accept something less than that.

17 MR. MOORE: Yeah, absolutely, your Honor. Mary's
18 absolutely right.

19 I would need to -- a few minutes to call our client and
20 just get the client's input. I do have the cell phone number
21 of our client contact. And I would call him right away and
22 get back with you, I would hope, within a matter of minutes.

23 THE COURT: I appreciate you doing that. And that
24 was something I was going to encourage if you didn't have
25 authorization to go with less than a unanimous verdict

1 because, of course, a client has a big stake if this has to be
2 tried again.

3 MR. MOORE: Yes, yes.

4 THE COURT: Please do confer with your client and
5 then let me know when you have a response. And we will go on
6 the record again at that time with the response, so I know how
7 to get back to the jury.

8 All right. Thank you, Mr. Moore. I'll let you get ahold
9 of your client.

10 MR. MOORE: Okay. Thank you, Judge. Thank you,
11 Mary.

12 (Break taken from 4:03 to 4:10 p.m.)

13 THE COURT: We now have plaintiff's counsel in the
14 room and Mr. Moore is on the telephone. And Mr. Moore, can
15 you tell me what your client advised you?

16 MR. MOORE: Sure. And for the record, Allison Balus
17 is also on the phone.

18 THE COURT: Very good. Hello, Ms. Balus.

19 MS. BALUS: Hi.

20 MR. MOORE: Creighton is willing to stipulate to less
21 than a unanimous verdict.

22 THE COURT: All right.

23 MR. MOORE: And I'm not sure how the Court or the
24 other side wants to work it with regard to what "less than
25 unanimous" means.

1 THE COURT: Well, I want to be very clear about what
2 "less than unanimous" means. Either we're going to say it
3 will be a majority, and that's easy since we have an odd
4 number, and that would make it easy for the jury because
5 there's obviously a majority leaning one way or the other;
6 or we can specify the number, agree upon the number.

7 So, Mr. Moore, is it your understanding from your client
8 that they would go with a majority verdict?

9 MR. MOORE: No.

10 THE COURT: Okay. Well, then that narrows it down.

11 MR. MOORE: Yeah.

12 THE COURT: We can also start with a 10-to-1 verdict;
13 and if we don't get a verdict, work from there. We just go
14 back to the drawing board here.

15 So if it's agreeable to -- or you can come up with some
16 number in between and agree upon that right now. But I'll let
17 plaintiff's counsel talk now and see what's agreeable.

18 MS. VARGAS: Well, Scott, I think we remain open to
19 where you stand on this. So, we certainly would accept 10 to
20 1. But if there's something else your client would be willing
21 to accept, you know, 9 to 2, then we'd accept that as well.

22 MR. MOORE: I mean, I -- I would probably rather
23 start out with 9 to 2 and see where that gets us.

24 THE COURT: All right.

25 MR. MOORE: If that would be acceptable to you, Mary.

1 MS. VARGAS: Yes, that's fine, Scott.

2 THE COURT: The parties have agreed to accept a
3 nine-person verdict.

4 And my response will be: The parties have agreed to
5 accept a verdict of nine jurors.

6 I think that should be clear enough. Any objection to
7 that wording, Ms. Vargas?

8 MS. VARGAS: None, your Honor.

9 THE COURT: Okay. Mr. Moore?

10 MR. MOORE: None from the defendant, your Honor.

11 THE COURT: That will be the response. Thank you so
12 much.

13 I'll let you know when we hear back.

14 MR. MOORE: Very good. Thank you.

15 MS. VARGAS: Thank you.

16

17 (Adjourned at 4:14 p.m.)

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20 I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

21

22 /s Brenda L. Fauber
23 Brenda L. Fauber, RDR, CRR

7-21-14
Date

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